

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2588 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVINDBHAI JERAMBHAI VAJA

Versus

G S R T CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/12/98

ORAL JUDGEMENT

Heard learned Counsel for the parties.

2. Rule. Mr.H.S.Munshaw waives the service of Rule

on behalf of the respondent.

3. The petitioner was dismissed from service on certain charges of misconduct, in the year 1967. The said order of dismissal was challenged before the Civil Court, at Junagadh. The Court directed to reinstate the petitioner with backwages. The matter was taken upto the High Court, in appeal, by the Corporation which culminated in a consent order dated 1.2.1977. The Corporation agreed to reinstate the petitioner in service on the condition that he will not be entitled to backwages. It was, however, agreed that the petitioner shall be given continuity of service for the purpose of seniority and promotion etc. only. However, the petitioner was not given the seniority and promotion, and therefore, an industrial dispute was raised which culminated in Reference to the Industrial Tribunal, Rajkot. On account of the negligence of the Trade Union, the claim was rejected for want of prosecution, by order dated 30th April 1986. The petitioner filed an application under the provisions of the Industrial Disputes (Gujarat) Rules, 1966. However, the said application has been rejected by the order of the Industrial Tribunal, Rajkot, dated 21st June 1997. The said order has been challenged in this Special Civil Application.

4. It is contended by learned Counsel Mr.Rathod appearing for the petitioner that the Tribunal has taken an extremely technical view in rejecting the application for restoration. It is submitted that there was some negligence on the part of the Union for which the petitioner workman should not have been punished. On the other hand, Mr.Munshaw submits that the learned Judge of the Industrial Tribunal has rejected the application for restoration by a well reasoned order. It is found that inspite of repeated opportunities given, the Trade Union did not file the reply. It is further contended that even the restoration application has been filed after a delay of one year.

5. At the outset, without expressing any opinion, I am doubtful if the learned Judge of the Industrial Tribunal could reject the Reference for want of prosecution. Be that as it may, even if there was some lapse on the part of the Union representing the petitioner, the Tribunal ought to have taken a liberal view and allowed the matter to be decided on merits more particularly when there is an allegation against the Corporation that they have not complied with certain assurance given before this Court. Considering the facts

and circumstances of this case, I consider that the Reference should be answered on merit.

6. In view of the aforesaid, this Special Civil Application is allowed and the order dated 21st June 1997, the award dated 30th April 1986 and the notice of publication dated 21st July 1986 are quashed and set aside. The Industrial Tribunal shall decide the Reference on its own merit. It is further made clear that in case the Reference is accepted and any direction is given to accord the petitioner the seniority or annual increments, that shall be given only on notional basis and the petitioner will not be entitled to the monetary benefits for the period of delay attributed to him or the Trade Union. The petitioner shall appear before the Industrial Tribunal, at Rajkot, on 30th December 1998. The petitioner shall also file the statement of claim on the same day. It is expected that the Reference is answered latest by the end of the year 1999. Rule is made absolute to the aforesaid extent. No order as to costs.

sreeram